

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of Offences affecting Life

299. Culpable homicide —

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1 — A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2 — Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3 — The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

COMMENTS

(i) "**Culpable homicide**" is genus, and "murder" is the specie. All "murder" is culpable homicide but not *vice-versa*; *Narasingh Chellan v. State of Orissa*, (1997) 2 Crimes 78 (Ori).

(ii) The assault for murder cannot be said to be sudden and without meditation as the deceased was not armed; *State of Maharashtra v. Krishna Murti Lazmipatti Naidu*, AIR 1981 SC 617 : (1981) SC Cr R 398 (1981) Cr LJ 9 : (1981) SCC (Cr) 354.

300. Murder —

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly — If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly — If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly — If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1 —When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos: —

First — That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly — That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly — That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation — Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2 — Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3 — Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 — Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation — It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 — Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

Comments

(i) In case where there was no intention to cause death, the act was done with knowledge that same is likely to cause death, the guilt of offence comes under part II of sec. 304; *S.D. Soni v. State of Gujarat*, (1991) Cr LJ 330 (SC).

(ii) In absence of intention to cause particular injury likely to cause death conviction comes under part II of sec. 304; *Randhir Singh v. State of Punjab*, AIR 1982 SC 55 (1981) Cr LR (SC) 543: (1981) 4 SCC 484.

(iii) When there was no evidence as to how death came about, evidence relating to charge of murder was held to be insufficient and unacceptable; *Kedar Nath v. State of Madhya Pradesh*, (1991) Cr LJ 989 (SC).

(iv) When in case of murder complaint filed after a month of incident and witnesses, statement recorded after 9 months, conviction cannot be founded; *State of West Bengal v. Shew Mangal Singh*, AIR 1981 SC 1917: (1981) Cr LJ 1683: (1981) SCC (Cr) 782 : (1981) Cr LR (SC) 501 : (1981) 4 SCC 2.

(v) Circumstances that accused were in possession of buffaloes belonging to deceased cannot lead to hold accused guilty of murder; *Joga Gola v. State of Gujarat*, AIR 1982 SC 1227: (1982) SCC (Cr) 141.

(vi) When accused had no intention to cause injury on non-vital part of body which was sufficient to cause death in ordinary course of nature, *illustration (c)* of section 300 is not applicable; *Gokul Parashram Patil v. State of Maharashtra*, AIR 1981 SC 1441: (1981) Cr LJ 1033.

(vii) The totality of the injuries caused to the victim clearly supports the finding of both the courts below that the accused/appellants went on belabouring the deceased till he died on the spot. In the circumstances, the contention that the accused did not intend to cause the murder of the deceased cannot be upheld by the Supreme Court; *Prabhu v. State of Madhya Pradesh*, (1991) Cr LJ 1373 (1373-1374) (SC).

(viii) Having regard to the number of injuries inflicted on the deceased it was not possible to uphold the contention that there was no intention to kill; *Prabhu v. State of Madhya Pradesh*, (1991) Cr LJ 1373 (1373-1374) (SC).

(ix) The establishment of the involvement of the accused on the incident and misgiving of a barchhi blow to the grandson of the deceased when he tried to go to the rescue of his grand-father, is sufficient to convict the accused under section 300 read with section 34; *Banta Singh v. State of Punjab*, (1991) Cr LJ 1342 (SC).

(x) It is fallacious to contend that when death is caused by a single blow clause thirdly is not attracted and, therefore, it would not amount to murder. The ingredient 'intention' in that clause gives clue in a given case whether offence involved is murder or not; *Jai Prakash v. The State (Delhi Administration)*, (1991) 1 Crimes 474 (SC).

(xi) The number and nature of injuries may furnish good evidence to consider whether the accused had exceeded the right to private defence; *Patori Devi v. Amar Nath*, (1988) Cr LJ 836: AIR 1988 SC 560.

(xii) Circumstantial evidence is not sufficient to convict accused when possibility of deceased receiving fatal injury by fall cannot be ruled out; *State of Rajasthan v. Smt. Kamla*, (1991) Cr LJ 602 (SC).

(xiii) In case of murder in which the conclusion of guilt is drawn by prosecution it must be fully established beyond all reasonable doubt and consistent with the guilt of the accused; *S.D. Soni v. State of Gujarat*, (1991) Cr LJ 330 (SC).

(xiv) Infliction of the injury on the vital part of the body with the agricultural instrument by the enraged accused in a sudden quarrel—Held, accused did not cause the injury intentionally; *Patel Rasiklal Becharbhai v. State of Gujarat*, AIR 1992 SC 1150.

(xv) (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. *Venkatesan v. State of Tamil Nadu*, (1997) 3 Crimes 146 (Mad).

(xvi) Mere sudden quarrel would not entitle the accused to seek for Exception 4 to section 300; *Samuthram alias Samudra Rajan v. State of Tamil Nadu*, (1997) 2 Crimes 185 (Mad).

(xvii) To invoke Exception 4 to section 300, four requirements must be satisfied, namely (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner... The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage

or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly; *Samuthram alias Samudra Rajan v. State of Tamil Nadu*, (1997) 2 Crimes 185 (Mad).

(xviii) Where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, it will not be correct to assume private defence for both sides. Such a case will be a case of sudden fight and conflict and has to be dealt with under Exception 4 to section 300 of the Code; *Januram v. State of Madhya Pradesh*, (1997) 2 Crimes 582 (MP).

301. Culpable homicide by causing death of person other than person whose death was intended —

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

COMMENTS

Accused is punishable for murder under doctrine of transfer of malice under section 301 of the Code when he aimed at one and killed another person; *Jagpal Singh v. State of Punjab*, (1991) Cr LJ 597 (SC).

302. Punishment for murder —

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Death, or imprisonment for life, and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

COMMENTS

(i) When ocular evidence in murder case is unreliable benefit of doubt to be given to all accused; *Chandu Bhai Shana Bhai Parmar v. State of Gujarat*, AIR 1982 SC 1022 : (1981) SCC (Cr) 682.

(ii) The facts taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the murder was committed by

the appellant and none else; *Daya Ram v. The State (Delhi Administration)*, (1988) Cr LJ 865: AIR 1988 SC 615.

(iii) Provisions of death sentence being an alternative punishment for murder is not unreasonable; *Bachhan Singh v. State of Punjab*, AIR 1980 SC 898: (1980) 2 SCC 864: (1980) Cr LJ 636 : (1980) Cr LR (SC) 388: 1980 (2) SCJ 475.

(iv) In case where facts and circumstances from which conclusion of guilt was sought to be drawn by prosecution was not established beyond reasonable doubt the conviction under section 302 read with section 34 and under section 392 had to be quashed; *Hardyal and Prem v. State of Rajasthan*, (1991) Cr LJ 345 (SC).

(v) Accused committed murder in professional manner with planned motivation, accused deserved no sympathy even when the accused had no personal motive; *Kuljeet Singh v. Union of India*, AIR 1981 SC 1572: (1981) Cr LJ 1045: (1981) Cr LR (SC) 328.

(vi) In dowry deaths motive for murder exists and what is required of Courts is to examine as to who translated it into action as motive viz., whether individual or family; *Ashok Kumar v. State of Rajasthan*, (1991) 1 Crimes 116 (SC).

(vii) Crime of murder committed against public servant doing official duties must be discouraged and dealt with firm hand; *Gayasi v. State of Uttar Pradesh*, AIR 1981 SC 1160: (1981) ALJ 441: (1981) Cr LJ 883: (1981) SCC (Cr) 590: (1981) Cr App. R (SC) 385: (1981) 2 SCC 713.

(viii) Fatal injury caused by the accused in broad day light, evidence of the eye witness and medical evidence being corroborative, conviction under section 302, held, sustainable; *Wazir Singh v. State of Haryana*, AIR 1992 SC 1429.

(ix) It is well settled that if the evidence of the eye-witnesses are held to be reliable and inspire confidence then the accused cannot be acquitted solely on the ground that some superficial injuries found on the person of the accused concerned, had not been explained by the prosecution; *A.M. Kunnikoya v. State of Kerala*, 1993 (1) Crimes 1192 (SC).

(x) Conviction can be based on testimony of a single eye witness provided his testimony is found reliable and inspires confidence; *Anil Phukan v. State of Assam*, 1993 (1) Crimes 1180 (SC).

(xi) When the appellant dealt a severe knife blow on the stomach of deceased without provocation and when deceased was unarmed and had already been injured by co-accused the appellant cannot be held that he had no intention to cause a murderous assault by mere fact that only one blow was inflicted; *Nashik v. State of Maharashtra*, 1993(1) Crimes 1197 (SC).

(xii) In cases depending on circumstantial evidence it is true that the chain of events proved by the prosecution must show that within all human probability the

offence has been committed by the accused, but the court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path; *Sarbir Singh v. State of Punjab*, 1993(1) Crimes 616 (SC).

(xiii) Non-explanation of the injuries on the person of the accused by the prosecution may not affect the prosecution case if the injuries sustained by the accused are minor or superficial or where the evidence produced by the prosecution is clear and cogent and is of independent and dis-interested persons and is consistent with credit worthiness; *Sawai Ram v. State of Rajasthan*, (1997) 2 crimes 148 (Raj).

(xiv) Two offences under section 302 and section 306 of the Indian Penal Code are of distinct and different categories; *Sangarabonia Sreenu v. State of Andhra Pradesh*, (1997) 4 Supreme 214.

(xv) The basic constituent of an offence under section 302, is homicidal death; *Sangarabonia Sreenu v. State of Andhra Pradesh*, (1997) 4 Supreme 214.

303. Punishment for murder by life-convict —

Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

CLASSIFICATION OF OFFENCE

Punishment—Death—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

304. Punishment for culpable homicide not amounting to murder —

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Para II: Punishment—Imprisonment for 10 years, or fine, or both—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

COMMENTS

(i) Before an accused is held guilty and punished under first part or second part of section 304 a death must have been caused by the assailant under any of the circumstances mentioned in the five exceptions to section 300; *Harendra Nath Mandal v. State of Bihar*, 1993(1) Crimes 984 (SC).

(ii) Out of the three accused persons, one of the accused person gave a fatal blow on the head of the deceased, the other accused person injured the deceased by spear on his knee and arm. First accused person is liable to be convicted under part I of section 304. The other accused person is liable to be convicted under section 324 as section 34 has not been applied after setting aside conviction under section 147 of the Indian Penal Code; *Kedar Prasad v. State of Madhya Pradesh*, AIR 1992 SC 1629.

(iii) Where there was absence of prior enmity with deceased and intention accused was sentenced under section 304, part II and not under section 302; *Rajju v. State of Uttar Pradesh*, (1994) Cr LJ 105 (All).

(iv) Whether the plea of drunkenness can be taken as defence for claiming acquittal or for lessening sentence depends upon 'intention' and 'knowledge' of the accused; *Mirza Ghani Baig v. State of Andhra Pradesh*, (1997) 2 Crimes 19 (AP).

304A. Causing death by negligence —

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

Comments

In order to impose criminal liability on the accused, it must be found as a fact that collusion was entirely or mainly due to the rashness or negligence; *Munile Sao v. State of Bihar* (1997) 3 Crimes 200 (Pat).

304B. Dowry death —

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection

with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation —For the purpose of this sub-section, "**dowry**" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment of not less than 7 years but which may extend to imprisonment for life—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

COMMENTS

Section 304B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. As a consequence, accused cannot be tried and punished for the offence of dowry death provided in section 304-B of the Code with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death; *Soni Devrajibhai Babubhai v. State of Gujarat*, 1991 Cr LJ (313) (SC).

305. Abetment of suicide of child or insane person —

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Death, or imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

306. Abetment of suicide —

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by Court of Session—Non-compoundable.

Comments

(i) To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary; *Pallem Deniel Victorians Victor Manter & Ors. v. State of Andhra Pradesh*, (1997) 1 Crimes 499 (AP).

(ii) Two offences under section 302 and section 306 of the Indian Penal Code are of distinct and different categories; *Sangarabonia Sreenu v. State of Andhra Pradesh* (1997) 4 Supreme 214.

The basic constituents of an offence under section 306, IPC are suicidal death and abetment thereof; *Sangarabonia Sreenu v. State of Andhra Pradesh*, (1997) 4 Supreme 214.

307. Attempt to murder —

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts —

When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensure.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in

this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Para II: Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Para III: Punishment—Death, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

COMMENTS

(i) If a person who does an act with intention or knowledge that if by that act caused death, he will be guilty of murder; *Vasant Virthu Jadhav v. State of Maharashtra*, (1997) 2 Crimes 539 (Bom).

(ii) The question of intention to kill or the knowledge of death in terms of section 307, is a question of fact and not one of law. It would all depend on the facts of a given case; *Vasant Virthu Jadhav v. State of Maharashtra*, (1997) 2 Crimes 539 (Bom).

(iii) The important thing to be borne in mind in determining the question whether an offence under section 307, is made out is the intention and not the injury (even if simple or minor); *Vasant Virthu Jadhav v. State of Maharashtra*, (1997) 2 Crimes 539 (Bom).

(iv) It is not necessary that injury, capable of causing death, should have been inflicted. What is material to attract, the provisions of section 307 is the guilty intention or knowledge with which the act was done, irrespective of its result. The intention and knowledge are the matters of inference from totality of circumstances and cannot be measured merely from the results; *Ansarudin v. State of Madhya Pradesh*, (1997) 2 Crimes 157 (MP).

(v) The intention or knowledge of the accused must be such as is necessary to constitute murder; *Hari Kishan and State of Haryana v. Sukhbir Singh*, (1989) Cr LJ 116: AIR 1988 SC 2127.

(vi) When in the absence of intention accused fired shot causing simple injury to victim, conviction under Section 324 instead of under section 307 justified; *Kundan Singh v. State of Punjab*, AIR 1982 SC 62.

(vii) When only one accused out of six being members of unlawful assembly armed with deadly weapon fired shots causing injuries falling under section 307, conviction under section 307 justified; *Tukaram Dayamu Gurav v. State of Maharashtra*, AIR 1982 SC 59: (1982) Cr LJ 199.

308. Attempt to commit culpable homicide —

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Para II: Punishment—Imprisonment for 7 years, or fine, or both Cognizable—Non-Bailable—Triable by Court of Session—Non-compoundable.

309. Attempt to commit suicide —

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Simple imprisonment for 1 year, or fine or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

COMMENTS

The Supreme Court has set aside its earlier judgment in *P. Rathinam/ Nagbhushan Patnaik v. Union of India*, JT 1994 (3) SC 392, wherein the Court had struck down section 309 as unconstitutional. In a country where one-half of its population still live below the poverty line, the right to die by suicide cannot be granted to any person. Article 21 of the Constitution, which gives right to life and personal liberty, by no stretch of imagination can be said to impliedly include right to death by committing suicide. The section is also not violative of Article 14. There is no requirement of awarding any minimum sentence. The sentence of imprisonment or fine is not compulsory but discretionary; *Smt. Gian Kaur v. The State of Punjab*, JT 1996 (3) SC 339.

310. Thug —

Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311. Punishment —

Whoever is a thug, shall be punished with imprisonment for life, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Of the Causing of Miscarriage, of Injuries to Unborn Children, of the Exposure of Infants, and of the Concealment of Births

312. Causing miscarriage —

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation —A woman who causes herself to miscarry, is within the meaning of this section.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 3 years, or fine or both—Non-cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Para II: Punishment—Imprisonment for 7 years and fine—Non-cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

313. Causing miscarriage without woman's consent —

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

314. Death caused by act done with intent to cause miscarriage —

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term may extend to ten years, and shall also be liable to fine;

If act done without woman's consent — And if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

Explanation — It is not essential to this offence that the offender should know that the act is likely to cause death.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Para II: Punishment—Imprisonment for life, or as above—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

315. Act done with intent to prevent child being born alive or to cause it to die after birth —

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years, or fine, or both—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

316. Causing death of quick unborn child by act amounting to culpable homicide —

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

317. Exposure and abandonment of child under twelve years, by parent or person having care of it —

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation — This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years, or fine, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

318. Concealment of birth by secret disposal of dead body —

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

Of Hurt

319. Hurt —

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

320. Grievous hurt —

The following kinds of hurt only are designated as "**grievous**": —

First — Emasculation.

Secondly — Permanent privation of the sight of either eye.

Thirdly — Permanent privation of the hearing of either ear,

Fourthly — Privation of any member or joint.

Fifthly.— Destruction or permanent impairing of the powers of any member or joint.

Sixthly — Permanent disfiguration of the head or face.

Seventhly — Fracture or dislocation of a bone or tooth.

Eighthly — Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

321. Voluntarily causing hurt —

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "**voluntarily to cause hurt**".

322. Voluntarily causing grievous hurt —

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "**voluntarily to cause grievous hurt**."

Explanation —A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which cause Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Punishment for voluntarily causing hurt —

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 1 year, or fine of 1,000 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Compounded by the person to whom the hurt is caused.

324. Voluntarily causing hurt by dangerous weapons or means —

Whoever, except in the case provided for by section 334, voluntarily causes hurt by _____ means _____ of _____ any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person to whom hurt is caused with the permission of the court.

325. Punishment for voluntarily causing grievous hurt —

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years, and fine—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person to whom hurt is caused with the permission of the court.

COMMENTS

The act of squeezing the testicles of a person would be an offence of causing grievous hurt; *State of Karnataka v. Shivalingaiah*, (1988) Cr LJ 394 : AIR 1988 SC 115.

326. Voluntarily causing grievous hurt by dangerous weapons or means—

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

327. Voluntarily causing hurt to extort property, or to constrain to an illegal act —

Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

328. Causing hurt by means of poison, etc. with intent to commit an offence —

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act —

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

330. Voluntarily causing hurt to extort confession, or to compel restoration of property —

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) *A*, a police-officer, tortures *Z* in order to induce *Z* to confess that he committed a crime. *A* is guilty of an offence under this section.

(b) *A*, a police-officer, tortures *B* to induce him to point out where certain stolen property is deposited. *A* is guilty of an offence under this section.

(c) *A*, a revenue officer, tortures *Z* in order to compel him to pay certain arrears of revenue due from *Z*. *A* is guilty of an offence under this section.

(d) *A*, a zamindar, tortures a raiyat in order to compel him to pay his rent. *A* is guilty of an offence under this section.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property —

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by Court of Session—Non-compoundable.

332. Voluntarily causing hurt to deter public servant from his duty —

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Bailable—
Triable by Magistrate of the first class—Non-compoundable.

333. Voluntarily causing grievous hurt to deter public servant from his duty —

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by Court of Session—Non-compoundable.

334. Voluntarily causing hurt on provocation —

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 1 month, or fine of 500 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Compoundable by the person to whom the hurt is caused.

335. Voluntarily causing grievous hurt on provocation —

Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation— The last two sections are subject to the same provisos as *Explanation 1*, section 300.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 4 years, or fine of 2000 rupees, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Compoundable by the person to whom hurt is caused with the permission of the court.

336. Act endangering life or personal safety of others —

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 months, or fine of 250 rupees, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

337. Causing hurt by act endangering life or personal safety of others —

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine of 500 rupees, or both—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person to whom hurt is caused with the permission of the court.

338. Causing grievous hurt by act endangering life or personal safety of others —

Whoever causes grievous hurt to any person to doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine of 1,000 rupees, or both—
Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person to whom hurt is caused with the permission of the court.

Of Wrongful Restraint and Wrongful Confinement

339. Wrongful restraint —

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception —The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Wrongful confinement —

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "**wrongfully to confine**" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in. A is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Punishment for wrongful restraint —

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Simple imprisonment for 1 month, or fine of 500 rupees, or both—
Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person restrained or confined.

342. Punishment for wrongful confinement —

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 1 year, or fine of 1,000 rupees, or both—
Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person restrained or confined.

343. Wrongful confinement for three or more days —

Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—
Triable by any Magistrate—Compoundable by the person confined with the permission of the court.

344. Wrongful confinement for ten or more days —

Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years and fine—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person confined with the permission of court.

345. Wrongful confinement of person for whose liberation writ has been issued —

Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in

addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years in addition to imprisonment under any other section—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

346. Wrongful confinement in secret —

Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, in addition to imprisonment under any other section—Cognizable—Bailable—Triable by Magistrate of the first class—Compoundable by the person confined with the permission of the court.

347. Wrongful confinement to extort property, or constrain to illegal act —

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years and fine—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

348. Wrongful confinement to extort confession, or compel restoration of property —

Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable

security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years and fine—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Of Criminal Force and Assault

349. Force —

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First — By his own bodily power.

Secondly — By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly — By inducing any animal to move, to change its motion, or to cease to move.

350. Criminal force —

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes. A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has criminal force by Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with that water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351. Assault —

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation — Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352. Punishment for assault or criminal force otherwise than on grave provocation —

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation — Grave and sudden provocation will not mitigate the punishment for an offence under this section. if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 months, or fine of 500 rupees, or both—Non-Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person assaulted or to whom criminal force is used.

353. Assault or criminal force to deter public servant from discharge of his duty —

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

354. Assault or criminal force to woman with intent to outrage her modesty —

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation —

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Non-Cognizable—Bailable—Triable by any Magistrate—Compounded by the person assaulted or to whom criminal force is used.

356. Assault or criminal force in attempt to commit theft of property carried by a person —

Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

357. Assault or criminal force in attempt wrongfully to confine a person —

Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 1 year, or fine of 1,000 rupees, or both—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person assaulted or to whom the force was used with the permission of the court.

358. Assault or criminal force on grave provocation —

Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation —The last section is subject to the same Explanation as section 352.

CLASSIFICATION OF OFFENCE

Punishment—Simple imprisonment for one month, or fine of 200 rupees, or both—Non-cognizable—Bailable—Triable by any Magistrate—Compoundable by the person assaulted or to whom criminal force is used.

Of Kidnapping, Abduction, Slavery and Forced Labour

359. Kidnapping —

Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.

360. Kidnapping from India —

Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.

361. Kidnapping from lawful guardianship —

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation — The words "**lawful guardian**" in this section include any person lawfully entrusted with the care of custody of such minor or other person.

Exception — This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

STATE AMENDMENTS

Union of Territory of Manipur:

In its application to Union Territory of Manipur, in section 361 for the words 'eighteen' substitute the word 'fifteen'.

Vide Act No. 30 of 1950.

362. Abduction —

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

COMMENTS

It is well known that the ingredients of the two offences—'**kidnapping**' and '**abduction**'— are entirely different. These are two distinct offences; *Abhaya Jena v. State of Orissa*, (1997) Crimes 531 (Ori).

363. Punishment for kidnapping —

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

363A. Kidnapping or maiming a minor for purposes of begging —

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor can be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section, —

(a) **"begging"** means—

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) **"minor"** means—

(i) in the case of a male, a person under sixteen years of age;
and

(ii) in the case of a female, a person under eighteen years of age.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Para II: Punishment—Imprisonment for life and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

364. Kidnapping or abducting in order to murder —

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) *A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.*

(b) *A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.*

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

364A. Kidnapping for ransom, etc.—

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or to do or abstain from doing any act or to pay shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

Classification of Offence

Punishment—Death, or imprisonment for life and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

365. Kidnapping or abducting with intent secretly and wrongfully to confine person —

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable—
Triable by Magistrate of the first class—Non-compoundable.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by Court of Session—Non-compoundable.

366A. Procurement of minor girl —

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by Court of Session—Non-compoundable.

367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.—

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by court of Session—Non-compoundable.

368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person —

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

CLASSIFICATION OF OFFENCE

Punishment—Punishment for kidnapping or abduction—Cognizance—Non-bailable—Triable by court by which the kidnapping or abduction is triable—Non-compoundable.

369. Kidnapping or abducting child under ten years with intent to steal from its person —

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable—
Triable by Magistrate of the first class—Non-compoundable.

370. Buying or disposing of any person as a slave —

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Non-cognizable—Bailable—
Triable by Magistrate of the first class—Non-compoundable.

371. Habitual dealing in slaves —

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or imprisonment for 10 years, and fine—
Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

372. Selling minor for purposes of prostitution, etc.—

Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

Explanation I — When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II — For the purposes of this section "**illicit intercourse**" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi*-marital relation.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by Court of Session—Non-compoundable.

373. Buying minor for purposes of prostitution, etc.—

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I — Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II — "Illicit intercourse" has the same meaning as in section 372.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—
Triable by Court of Session—Non-compoundable.

374. Unlawful compulsory labour —

Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 1 year, or fine, or both—Cognizable—Bailable—
Triable by any Magistrate—Non-compoundable.

Sexual offences

375. Rape —

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First — Against her will.

Secondly — Without her consent.

Thirdly — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly — With or without her consent, when she is under sixteen years of age.

Explanation — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

STATE AMENDMENT

Union Territory of Manipur:

(a) in clause sixthly, for the word "sixteen" substitute the word "fourteen"; and

(b) in the Exception, for the word "fifteen" substitute the word "thirteen".

Vide Act 30 of 1950.

COMMENTS

Mere absence of spermatozoa cannot cast a doubt on the correctness of the prosecution case; *Prithi Chand v. State of Himachal Pradesh*, (1989) Cr LJ 841: AIR 1989 SC 702.

376. Punishment for rape —

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 — Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2 — "**Women's or children's institution**" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3 — "**Hospital**" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for life or imprisonment for ten years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Para II: Punishment—Imprisonment for two years or fine or both—Non-Cognizable—Bailable—Triable by Court of Session—Non-compoundable.

Comments

(i) Corroborative evidence is not an imperative component of judicial credence in every case of rape; *State of Maharashtra v. Suresh Nivruthi Bhusare*, (1997) 2 Crimes 257 (Bom).

(ii) If a woman meekly submits to sexual intercourse it would be a case of consent; *State of Maharashtra v. Suresh Nivrutti Bhusare*, (1997) 2 Crimes 257 (Bom).

(iii) Normally a woman would not falsely implicate for the offence of rape at the cost of her character. In Indian society, it is very unusual that a lady with a view to implicate a person would go to the extent of stating that she was raped; *Madan Lal v. State of Madhya Pradesh*, (1997) 2 Crimes 210 (MP).

(iv) When the prosecutrix is a minor aged below 16 years, the question of her being a consenting party to the sexual intercourse does not arise or is of no consequence; *Naresh v. State of Haryana*, (1997) 2 Crimes 587 (P & H).

376A. Intercourse by a man with his wife during separation.—

Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for two years and fine—Non cognizable—Bailable—Triable by Court of Session.—Non-compoundable.

376B. Intercourse by public servant with woman in his custody —

Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for five years and fine—Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate)—Bailable—Triable by Court of Session—Non-compoundable.

376C. Intercourse by superintendent of jail, remand home, etc.—

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and

induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1 — "**Superintendent**" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2 — The expression "**women's or children's institution**" shall have the same meaning as in *Explanation 2* to sub-section (2) of section 376.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for five years and fine—Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate)—Bailable—Triable by Court of Session—Non-compoundable.

376D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital —

Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation —The expression "**hospital**" shall have the same meaning as in *Explanation 3* to sub-section (2) of section 376.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for five years and fine—Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate)—Bailable—Triable by Court of Session—Non-compoundable.

Of Unnatural Offences

377. Unnatural offences —

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation — Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—
Cognizable—Non-Bailable—Triable by Magistrate of the first class—Non-compoundable.